

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

YAMEL CUEVAS GONZALEZ,

Defendant.

)
)
)
)
) Criminal Action No.
) 1:19-cr-10361-IT-1
)
)
)

BEFORE THE HONORABLE INDIRA TALWANI, DISTRICT JUDGE

RULE 11 HEARING BY VIDEOCONFERENCE

Tuesday, January 19, 2021
3:22 p.m.

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts

Robert W. Paschal, RMR, CRR
Official Court Reporter
rwp.reporter@gmail.com

A P P E A R A N C E S

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P R O C E E D I N G S

(In open court at 3:22 p.m.)

THE DEPUTY CLERK: United States District Court is now in session, the Honorable Judge Indira Talwani presiding.

This is Case Number 19-cr-10361, United States versus Yamel Cuevas Gonzalez. Will counsel please identify themselves for the record.

MS. PELLEGRINI: Good afternoon, Your Honor. Nadine Pellegrini for the United States.

MR. KRASNOO: Good afternoon.

THE COURT: Good afternoon.

MR. KRASNOO: Good afternoon, Your Honor. James Krasnoo for the defendant, who is on Zoom with Mr. Hadad as an interpreter for these proceedings.

THE COURT: Good afternoon.

Ms. Marchione, if you could please swear in Mr. Hadad.

THE DEPUTY CLERK: Yes, Your Honor.

Please raise your right hand.

(Spanish interpreter duly sworn.)

THE DEPUTY CLERK: Please state your name for the record.

THE INTERPRETER: Gabriel Hadad. Good afternoon.

THE COURT: Good afternoon.

So I believe we're here for a change of plea

1 conference; is that correct?

2 MR. KRASNOO: That is correct, Your Honor.

3 MS. PELLEGRINI: Yes.

4 THE COURT: Okay. The Internet connection is a
5 little wavy, so hopefully we'll be able to proceed all the
6 way through, but I'm having a little distortion, both from
7 Mr. Krasnoo and Ms. Pellegrini. So hopefully we'll be okay.

8 So let me start by describing the arrangements
9 here, Mr. Cuevas Gonzalez. You are appearing here today by
10 videoconference. Your lawyer, the prosecutor, my courtroom
11 deputy, the interpreter, the court reporter, and I are all
12 appearing on -- by video with you. There are -- well, let me
13 just start -- if you have any trouble with the video or the
14 phone connection or you cannot hear or see what is happening,
15 let me know. Speak up, raise your hand, and I will stop the
16 proceeding and try to take care of it. If you need something
17 repeated, let me know.

18 The court reporter -- you can see online -- the
19 court reporter is preparing a transcript of this proceeding,
20 but there will be no recording of the video itself preserved.

21 Now, you have the right to be physically present in
22 open court for this proceeding, but you can waive that right.
23 Before I ask whether you intend to waive your right, you
24 should know the following:

25 Today is January 19, 2021. We are experiencing a

1 worldwide epidemic caused by the coronavirus. The president
2 of the United States and the governor of Massachusetts have
3 each declared a state of emergency. Congress has passed an
4 emergency statute that permits defendants in criminal cases
5 to appear in court by video or telephone for certain types of
6 proceedings under certain circumstances.

7 Our normal procedure before the emergency was to
8 have all defendants physically present in the courtroom for
9 change of plea hearings. We are attempting, however, to
10 protect the health and safety of court employees, lawyers,
11 the defendants, security personnel and everyone else involved
12 in the court system; and at the same time, to -- we are
13 attempting to permit the basic functions of court to go
14 forward without unnecessary delays.

15 The physical appearance of defendants and their
16 counsel in the courthouse and transportation to and from the
17 courthouse are likely to increase the health risks for all
18 persons involved as well as the general public. To try to
19 minimize the health risks, we are giving defendants who
20 prefer to appear in court by video the option to do so. It
21 is voluntary. You do not have to appear by video, but if you
22 choose to appear by video, I will ask you to waive your right
23 to be physically present.

24 You should also know that you have the right to a
25 public proceeding and to have this proceeding conducted in

1 open court, in public view. And, again, our normal procedure
2 before the emergency was to have all such proceedings in open
3 court, in public view. In light of the emergency caused by
4 the pandemic and as announced on our website, we are
5 permitting members of the public to have access to this
6 videoconference.

7 And, Ms. Marchione, are there members of the public
8 on the conference line?

9 THE DEPUTY CLERK: Yes, Your Honor, there are.

10 THE COURT: Okay. So do you understand that you
11 have the right to be physically present in open court for
12 this change of plea?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand you have the right to
15 consult with your lawyer during the change of plea?

16 THE DEFENDANT: Correct.

17 THE COURT: Do you understand, if you wish to speak
18 with your lawyer during the change of plea, you just need to
19 let me know, and I will make arrangements for the two of you
20 to have a private communication? Okay?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand you have the right to
23 hear and see everything that happens in court during the
24 change of plea, but because this is by videoconference, all
25 you will see is what is on the screen? Do you understand

1 that?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand that your family
4 members and supporters have the right to attend this
5 proceeding, but to do so, they need to have used the
6 telephone lines? Do you understand that?

7 THE DEFENDANT: Correct.

8 THE COURT: Have you consulted with your lawyer
9 about waiving your right to appear in person?

10 THE DEFENDANT: We have spoken on video.

11 THE COURT: Okay. And do you agree to waive your
12 right to appear in person for this change of plea and instead
13 to appear by video?

14 THE DEFENDANT: It's better to do it this way.

15 THE COURT: Okay. And you waive your right to
16 appear in person, then?

17 THE DEFENDANT: Correct.

18 THE COURT: And do you also agree that, to the
19 extent that your right to public access in this proceeding is
20 in any way impaired, you waive that right?

21 THE DEFENDANT: Correct.

22 THE COURT: And to the lawyers, is there any reason
23 I should not accept the waiver?

24 MS. PELLEGRINI: No, Your Honor.

25 MR. KRASNOO: None from the defendant, Judge.

1 James Krasnoo -- defendant's attorney, James Krasnoo.

2 THE COURT: I find that defendant has knowingly and
3 voluntarily waived his right to appear physically and has
4 knowingly and voluntarily agreed to proceed by
5 videoconference. I also find that Mr. Cuevas Gonzalez's
6 change of plea cannot be further delayed without serious harm
7 to the interests of justice since delaying this proceeding
8 until it is reasonably safe for Mr. Cuevas Gonzalez and his
9 attorney to appear in person would frustrate his right to
10 speedy disposition --

11 Yes, Mr. Cuevas Gonzalez?

12 THE DEFENDANT: I just want to make sure that we
13 proceed on this medium, on this platform.

14 THE COURT: Yes. That's -- we are going to proceed
15 on this platform, but I need to make the record clear that it
16 is okay with everyone -- and most particularly, with you --
17 that we proceed this way. Okay? So I'm just going through
18 and making sure the record is clear.

19 So I find, again, that the change of plea cannot be
20 further delayed without serious harm to the interest of
21 justice since delaying the proceeding until it is reasonably
22 safe for Mr. Cuevas Gonzalez and his attorney to appear in
23 person would frustrate his right to a speedy disposition of
24 the charges brought against him.

25 I further find that the measures taken to provide

1 public access to this proceeding are reasonable under the
2 circumstances and that, to the extent that the defendant's
3 right to public access is in any way impaired, he has
4 knowingly and voluntarily waived that right. I accept the
5 waiver, and I will proceed now to the change of plea.

6 So with that, Ms. Marchione, can you please swear
7 in Mr. Cuevas Gonzalez?

8 THE DEPUTY CLERK: Yes, Your Honor.

9 Mr. Cuevas Gonzalez, please raise your right hand.

10 (Defendant duly sworn.)

11 THE DEPUTY CLERK: Please state your name for the
12 record.

13 THE DEFENDANT: Yamel Cuevas Gonzalez.

14 THE DEPUTY CLERK: Thank you.

15 THE COURT: Mr. Cuevas Gonzalez, do you understand
16 that you are now under oath and that if you answer any of my
17 questions falsely, your answers may later be used against you
18 in another prosecution for perjury or making a false
19 statement?

20 THE DEFENDANT: Correct.

21 THE COURT: I'm sorry; what was his response?

22 THE INTERPRETER: The answer was "correct.
23 Correct."

24 THE COURT: Thank you.

25 And, again, Mr. Cuevas Gonzalez, at any point, if

1 you need to speak to Mr. Krasnoo, you are welcome to do so.
2 Just let me know.

3 So how old are you?

4 THE DEFENDANT: 34.

5 THE COURT: And what education level have you
6 attained?

7 THE DEFENDANT: First year in high school.

8 THE COURT: And as you appear here today, are you
9 under the influence of any drug or alcoholic beverage of any
10 kind?

11 THE DEFENDANT: No, not at all.

12 THE COURT: Have you taken any medicine,
13 prescription or otherwise, that could affect your ability to
14 understand these proceedings and to testify truthfully?

15 THE DEFENDANT: No.

16 THE COURT: Have you received any recent treatment
17 for any mental illnesses or psychological problems of any
18 kind?

19 THE DEFENDANT: No.

20 THE COURT: Have you received a copy of the
21 indictment in this case?

22 THE DEFENDANT: I received everything my attorney
23 has sent me.

24 THE COURT: So the indictment is the formal charge
25 from the Government that sets forth the charge against you.

1 Have you seen that?

2 THE DEFENDANT: Okay. Yes.

3 THE COURT: And Count 1 charges you with a
4 violation of 21 U.S.C. Section 846, conspiracy to distribute
5 and to possess with intent to distribute 400 grams or more of
6 fentanyl from in or about February 2019 until on or about
7 August 5, 2019, in the District of Massachusetts, New York,
8 Mexico, and elsewhere.

9 Count 2 charges you with a violation of 21 U.S.C.
10 Sections 841(a) (1) and (b) (1) (A) (vi) and 18 U.S.C. Section 2,
11 distribution of and possession with intent to distribute
12 400 grams or more of fentanyl, aiding and abetting, on or
13 about May 6, 2019, in the District of Massachusetts and
14 elsewhere.

15 Count 3 charges you with a violation of 21 U.S.C.
16 Sections 841(a) (1) and (b) (1) (A) (vi) and 18 U.S.C. Section 2,
17 distribution of and possession with intent to distribute
18 400 grams or more of fentanyl, aiding and abetting, on or
19 about June 10, 2019, in the District of Massachusetts and
20 elsewhere.

21 And Count 4 charges you again with the same crime:
22 intent to distribute 400 grams or more of fentanyl, aiding
23 and abetting, on or about August 5, 2019, in the District of
24 Massachusetts and elsewhere.

25 And the indictment also includes drug forfeiture

1 allegations under 21 U.S.C. 853.

2 Do you understand the charges?

3 THE DEFENDANT: What was that last count, the
4 seizure of what exactly?

5 THE COURT: The last -- the last thing I said was
6 drug forfeiture allegations. That's a provision in the
7 indictment that you forfeit the proceeds of the crime.
8 Before that, Count 4 was the distribution and possession with
9 intent to distribute 400 grams or more of fentanyl, on or
10 about August 5, 2019, in the District of Massachusetts.

11 Did you understand those?

12 THE DEFENDANT: Okay. Yes, that's fine.

13 THE COURT: Okay. Do you understand that you're
14 represented here by counsel?

15 THE DEFENDANT: Correct.

16 THE COURT: And have you fully discussed the
17 charges against you and the facts and circumstances of this
18 case with counsel?

19 THE DEFENDANT: We have spoken.

20 THE COURT: And have you fully discussed them, the
21 full circumstances and facts of the case and the charges
22 against you, with your counsel?

23 THE DEFENDANT: We have spoken, correct.

24 THE COURT: Are you fully satisfied with your
25 counsel, representation, and the advice given to you in this

1 case by your attorney?

2 THE DEFENDANT: Correct.

3 THE COURT: Okay. And to counsel, have you
4 communicated all formal offers from the prosecution to accept
5 a plea on terms and conditions that may be favorable to the
6 accused?

7 MR. KRASNOO: Yes, Your Honor.

8 THE COURT: And I understand there is no plea
9 agreement; is that correct?

10 MR. KRASNOO: There is no plea agreement,
11 Your Honor. There is an oral discussion between
12 Ms. Pellegrini and myself wherein she has indicated that she
13 would be recommending, without a written plea agreement, the
14 minimum mandatory sentence that must be imposed in light of
15 the quantity of fentanyl, which is a ten-year minimum
16 mandatory sentence.

17 THE COURT: Okay. Mr. Cuevas Gonzalez, do you
18 understand that you have no agreement with the United States
19 Government with regard to this -- your guilty plea here?

20 THE DEFENDANT: Yes, madam.

21 THE COURT: And your attorney has just relayed that
22 the attorney for the United States will -- has said that she
23 will make a recommendation here of the minimum mandatory
24 sentence, but do you understand that that is not a binding
25 agreement? You don't have a binding written agreement with

1 the United States Government?

2 THE DEFENDANT: Correct.

3 THE COURT: Okay. Has anyone attempted in any way
4 to force you to plead guilty in this case?

5 THE DEFENDANT: No.

6 THE COURT: And are you pleading today of your own
7 free will?

8 THE DEFENDANT: Correct.

9 THE COURT: Do you understand the offenses to which
10 you are pleading guilty are felonies?

11 THE DEFENDANT: Pardon me? I didn't understand.

12 THE COURT: Do you understand these are felonies?
13 These are crimes that are punishable by more than a year in
14 prison, and so, for many different laws, they have serious
15 consequences. Do you understand that?

16 THE DEFENDANT: Correct.

17 THE COURT: And do you understand, if I accept your
18 plea, you will be judged guilty of these offenses?

19 THE DEFENDANT: Correct.

20 THE COURT: And do you understand that by being
21 judged guilty, you may lose valuable civil rights, including
22 the right to possess a gun or any kind of firearm or
23 ammunition? Do you understand that?

24 THE DEFENDANT: Correct.

25 THE COURT: And are -- are you a United States

1 citizen?

2 THE DEFENDANT: No.

3 THE COURT: So do you understand that by pleading
4 guilty, because you are not a United States citizen, you may
5 be removed from the United States, denied citizenship, and
6 denied admission to the United States in the future?

7 THE DEFENDANT: Yes, correct.

8 THE COURT: And have you fully discussed any
9 potential immigration consequences with your attorney?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. I'm going to go through now and
12 talk about the possible penalties.

13 And maybe I'll turn to you, Ms. Pellegrini. If you
14 could please state the maximum possible penalties provided by
15 law and any applicable mandatory minimum penalties here.

16 MS. PELLEGRINI: Certainly, Your Honor.

17 All of the counts carry the same penalties.
18 Because of the drug weight, there is a mandatory minimum for
19 each count of ten years. The maximum penalty by statute is
20 life imprisonment, but as Mr. Krasnook has indicated, I have
21 indicated to him that I will recommend no more than the
22 mandatory minimum of ten years.

23 In addition to the incarceration, there is a fine
24 that reaches up to \$10 million per count. There is a term of
25 supervised release, if the Court were going to impose such,

1 which carries a minimum mandatory of five years.

2 And then there is also the special assessment of
3 \$100 per count; and as the Court has mentioned, there are
4 potential immigration consequences to the plea for these
5 counts.

6 THE COURT: Is there any forfeiture issue here?

7 MS. PELLEGRINI: Well, Your Honor, I neglected to
8 discuss this with Mr. Krasnoo: I do not feel comfortable at
9 this time moving for forfeiture because some of the property
10 this is listed in the forfeiture allegation is alleged to
11 belong to the co-defendant, Carlos Nunez; in particular, the
12 vehicle and some monies that were found in the vehicle.

13 But until -- and unless Mr. Nunez is convicted of
14 those charges, I do not believe it's appropriate at this time
15 to move forward on the forfeiture allegations.

16 THE COURT: Okay. So assuming Mr. Cuevas Gonzalez
17 is sentenced before those issues are resolved with Mr. Nunez,
18 do I understand you to be saying that at -- the Government
19 would not be moving for forfeiture in connection with the
20 sentencing?

21 MS. PELLEGRINI: Correct.

22 THE COURT: Okay. Mr. Cuevas Gonzalez, did you
23 understand the minimum sentence that Attorney Pellegrini
24 described here, that if you're -- if -- once you've pled
25 guilty to these charges, the minimum sentence that I can

1 impose is imprisonment of ten years, five years of supervised
2 release, a special assessment of \$100 on each of these four
3 counts and -- did you understand that?

4 THE DEFENDANT: Yes, madam.

5 THE COURT: And I want to make sure you also
6 understand how the sentencing guidelines will work in this
7 case. Have you and your attorney talked about the sentencing
8 guidelines and how they might apply?

9 THE DEFENDANT: Yes. He has been explaining that
10 to me.

11 THE COURT: And so the way the guidelines will work
12 here is that you will be interviewed by the probation office,
13 and they will prepare a presentence report for me. That
14 report will have information about you, your criminal
15 history, crimes you've committed, any uncharged or dismissed
16 conduct.

17 And I may consider all of this information in
18 applying the sentencing guidelines. And you'll have the
19 right to challenge the facts in the guidelines, but I just
20 have to find those facts are more likely true than not in
21 order to consider those. Do you understand that?

22 THE DEFENDANT: Correct.

23 THE COURT: And will -- using the guidelines, I
24 will calculate what your guideline is, and I may or may not
25 come to the same calculation that your attorney has come to,

1 because then -- I don't know yet because I don't know what
2 your sentencing -- presentence report will state.

3 But do you understand that you won't have the right
4 to withdraw your plea if the guideline calculation is
5 different than you expect?

6 THE DEFENDANT: When you say if the sentencing or
7 the guideline is different to what I expected -- to what I
8 expected, different in what sense?

9 THE COURT: Well, I can sentence you -- once you've
10 pled guilty, I will sentence you to at least the ten-year
11 minimum mandatory. I have to do that by law. But I also
12 have to consider what the presentence report says. And the
13 presentence report might calculate that the sentence should
14 be higher than ten years. It can't -- it could calculate
15 lower than ten years, but that doesn't matter, because the
16 law requires I have to at least give you a ten-year
17 imprisonment.

18 So the presentence report could suggest that there
19 should be a higher guideline, and you don't get to pull
20 your -- withdraw your plea if that's different than you
21 expect. Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: And then whatever the sentencing
24 guideline is, that's a starting point for me. And I have the
25 authority under the law to sentence you to more than the

1 guidelines or less than the guidelines, so long as the
2 sentence that I impose is reasonable under the circumstances.

3 And the law requires I cannot sentence you for less
4 than ten years, but I can sentence you all the way up to life
5 depending on the facts that come out at the -- through the
6 presentence report and my understanding of it, so long as
7 what I sentence is reasonable under the circumstances.

8 Do you understand that?

9 THE DEFENDANT: Correct.

10 THE COURT: So although the Government has agreed
11 they won't recommend more than a ten-year sentence, it's
12 possible that I would sentence you to more than ten years.
13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand that you will not
16 be permitted to withdraw your plea of guilty if your sentence
17 is longer or different than you expect? Do you understand
18 that?

19 THE DEFENDANT: Yes. Is that something I may run
20 by my attorney?

21 THE COURT: Absolutely. If you want to take a
22 minute and talk with him, absolutely. Ms. Marchione -- so
23 the way this works, you'll get the -- we need to get the
24 guard in the room, the correctional officer in the room to
25 press the -- to indicate on the computer.

1 Mr. Hadad, can you -- he can't hear me. If you can
2 let him know and --

3 THE INTERPRETER: Yes, Judge.

4 THE COURT: And, Ms. Marchione, if you can put them
5 in a breakout. Thank you.

6 THE DEPUTY CLERK: There should be an invitation on
7 the screen now. Please let me know if there is not.

8 THE COURT: There we go. And Mr. Hadad.

9 (Pause in proceedings.)

10 MR. KRASNOO: Good afternoon, Your Honor.

11 I have consulted with my client, and he indicates
12 that he understands both what you've explained to him and
13 what I've explained to him and wishes to go forward.

14 THE COURT: Mr. Krasnoo, let's wait till we get
15 everybody back up and then start what you're saying.

16 MR. KRASNOO: Thank you.

17 THE COURT: You can start again.

18 MR. KRASNOO: Okay.

19 THE INTERPRETER: Hold on. Hold on, Mr. Krasnoo.
20 Hold on, Mr. Krasnoo.

21 THE COURT: Hold on. Hold on.

22 THE INTERPRETER: Yes, can you hear me, Judge, and
23 everybody else?

24 THE COURT: I can.

25 THE INTERPRETER: Okay. Thank you. We're good.

1 THE COURT: Okay. Go ahead, Mr. Krasnoo.

2 MR. KRASNOO: Okay. I'll try it again.

3 Your Honor, I have consulted with my client. He
4 understands what Your Honor has said; namely, that you have
5 the discretion to impose the sentence higher than the minimum
6 mandatory sentence which must be imposed under the statute.

7 I've explained to him what the maximum sentence is
8 to which he's exposed, as a legal matter, and he understands
9 that he may not withdraw his plea if you impose a sentence
10 higher than the minimum mandatory sentence which is going to
11 be recommended by the Government and recommended by myself
12 out of necessity. And he is -- understands that and is
13 content to go forward with this change of plea.

14 THE COURT: Okay. Mr. Cuevas Gonzalez, did you
15 understand what your attorney just told me?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you agree?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. And then the one other thing,
20 besides the imprisonment, just to make sure you understand,
21 currently, the indictment -- the forfeiture allegation in the
22 indictment seeks a \$97,000 forfeiture money judgment and
23 possession of the 2010 red Honda Accord.

24 And what the attorney for the Government explained
25 is that if the case is still going forward against Mr. Nunez,

1 your co-defendant, and he has -- he has not yet entered a
2 guilty plea or been found guilty -- then that issue of the
3 forfeiture will not be resolved; and, therefore, it would not
4 be part of a judgment against you.

5 But at this point, the allegation is still there,
6 and depending on what happens with Mr. Nunez, it could be
7 resolved; in which case, this could be part of the judgment
8 against you. Do you understand that?

9 THE DEFENDANT: Correct.

10 THE COURT: Okay. So the next thing I need to do
11 is to make sure -- now that you understand the consequences
12 of pleading guilty, I need to make sure you understand the
13 rights to a trial that you would be giving up by pleading
14 guilty. Okay? Do you understand you have the right to plead
15 not guilty to these offenses and to go to trial?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that you have a right
18 to trial by jury?

19 THE DEFENDANT: Correct.

20 THE COURT: Do you understand the jury is composed
21 of 12 jurors who must find beyond a reasonable doubt that you
22 committed the crime with which you're charged before you may
23 be found guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand at trial you would be

1 presumed to be innocent and the Government would have to
2 prove your guilt beyond a reasonable doubt?

3 THE DEFENDANT: Yes.

4 THE COURT: And you would have at trial the right
5 to the assistance of counsel for your defense? Do you
6 understand?

7 THE DEFENDANT: Yes.

8 THE COURT: And you would have the right to see and
9 hear all the witnesses against you and have them
10 cross-examined in your defense. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And you would have the right, if you
13 choose to exercise it, to testify and put on evidence in your
14 defense, and you would have the right to require witnesses to
15 come to court in your defense. You understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And you would have the right to refuse
18 to testify and refuse to put on evidence unless you
19 voluntarily elected to do so; and that if you decided not to
20 testify or not to put on any evidence, those facts could not
21 be used against you. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you further understand that by
24 entering a plea of guilty here today, if I accept your plea,
25 there will be no trial, and you will have waived or given up

1 your right to a trial as well as the rights that come with a
2 trial that I have just described? Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. So now I'm going to also make
5 sure that the Government can set forth the evidence that they
6 would use if this case were to go to trial and make sure that
7 you don't have any dispute with these facts.

8 So if this case went to trial, on Count 1, the
9 Government would have to prove that two or more persons
10 agreed to distribute and possess with intent to distribute a
11 controlled substance; that you were a member, a party to or a
12 member of that agreement; that you joined the agreement or
13 conspiracy knowing of its objectives to distribute and
14 possess with the intent to distribute a controlled substance
15 and intending to join together with the alleged conspirators,
16 with at least one alleged conspirator to achieve the objects;
17 and that the conspiracy involved a total of 400 grams or more
18 of a mixture or substance containing a detectable amount of
19 fentanyl.

20 And with regard to Counts 2, 3, and 4, that you
21 possessed a mixture or substance containing the controlled
22 substance; that you did so knowingly or intentionally; that
23 you intended to distribute the controlled substance; that the
24 controlled substance was fentanyl; and that the weight of the
25 mixture or substance containing the controlled substance was

1 400 grams or more; and that each of those counts, that this
2 happened on these three separate occasions.

3 Do you understand these elements and that the
4 Government would have to prove those elements beyond a
5 reasonable doubt in order for you to be found guilty at trial
6 as to these charges?

7 THE DEFENDANT: Yes.

8 THE COURT: And, Ms. Pellegrini, can you please
9 state the factual basis for the plea, what the Government
10 would be prepared to prove if this case were to go to trial?

11 MS. PELLEGRINI: Certainly, Your Honor.

12 To flesh out what the Court has just said,
13 beginning in February of 2019, the defendant, who used the
14 name Emanuel throughout the course of this investigation,
15 contacted an individual that I refer to as the confidential
16 witness, having received contact information from another
17 individual. Over the course of several months, the defendant
18 and the confidential witness spoke about the sale by the
19 defendant of controlled substances; specifically, fentanyl.

20 During the course of the conspiracy, there were
21 three separate buys, sales of fentanyl, the first occurring
22 in May of 2019. There was contact information and
23 destination information exchanged between the defendant and
24 the confidential witness wherein the defendant was going to
25 arrive at an address here in Massachusetts to provide

1 fentanyl to sell.

2 This is a part of the physical evidence, including
3 video and audiotapes and the testimonial evidence of law
4 enforcement agents and also of chemists with respect to what
5 was purchased and sold and what it turned out to be.

6 On that first day, the agents observed three males
7 driving through a parking lot at the destination, and one of
8 the individuals got out of the car -- turned out to be the
9 defendant, who introduced himself to the confidential witness
10 as being Emanuel. The defendant entered the confidential
11 witness's vehicle and wanted the confidential witness to move
12 his car closer to the silver Acura, which the three
13 individuals had arrived in.

14 When the confidential witness did that, the
15 defendant got back into the Acura. The agents could see that
16 as the defendant got back into the car, a second male, who is
17 unidentified and remains unidentified, passed the defendant a
18 Pringles potato chip container.

19 The defendant, in turn, gave that container to the
20 confidential witness, who opened it; and under the potato
21 chips, there was a black plastic bag that was found to
22 contain what the DEA lab analysis indicated was fentanyl,
23 with a weight of 500.2 grams, so in excess of the 400 grams,
24 in that instance.

25 The defendant took a thousand dollars for travel

1 expenses from the confidential witness. He and the other two
2 individuals departed the area.

3 The second controlled buy was in June of 2019.
4 Again, prior to this purchase and sale, the defendant called
5 the confidential witness and said he was ready to drive up
6 and deliver a kilo. The confidential witness was unavailable
7 on that particular day but said he could meet the next day.
8 There's a conversation about how much money and the amount of
9 the drugs to be exchanged or to be bought.

10 On June 10th, the defendant called again, called
11 the confidential witness to confirm the location. And at
12 this point, the agents observed another vehicle, a red Honda
13 Accord, arrive in the area.

14 When that vehicle arrived, the defendant again got
15 into the confidential witness's vehicle and got in on the
16 rear passenger side. The defendant picked up the money that
17 was going to be used to purchase the drugs and flipped
18 through it. The bag that the defendant gave to the
19 confidential witness was three individually wrapped packages
20 and, after DEA lab analysis, was found to contain fentanyl
21 with a weight of 1,493 grams.

22 And the third and final buy during the course of
23 this investigation and during the course of the conspiracy
24 was set and happened on August 5, 2019. Again, prior to the
25 meet, the confidential witness and the defendant negotiated

1 for a sale of a kilo of fentanyl. The defendant texted the
2 confidential witness and said he had departed the New York
3 City area at around seven and was on the way.

4 The defendant and another individual arrived in a
5 red Honda which was seen at the second meet. The defendant
6 exited from the passenger side and gave the confidential
7 witness -- I'm sorry -- an undercover agent, who was present,
8 a bag with the marking "Nissan," like the vehicle, on it.

9 The undercover agent gave a backpack containing
10 \$48,000 to the defendant. The defendant took possession of
11 that bag and returned to the Honda. When the two individuals
12 in the Honda started to drive away, they were stopped. Both
13 were arrested; that includes the defendant. The \$48,000 was
14 recovered in the back seat. The drug analysis for the kilo
15 indicated that it is fentanyl and it weighed 993 grams.

16 THE COURT: So the third transaction was -- there
17 was a transfer of \$48,000. What about on the second
18 transaction?

19 MS. PELLEGRINI: I'm not so good -- I'm not very
20 good with math, Your Honor. I do not recall what the amount
21 was. I suspect it was the remaining part that got us to
22 \$97,000; that is alleged in the forfeiture indictment. So it
23 would have been that amount -- because it was a kilo plus
24 another half a kilo on that second buy.

25 THE COURT: What you said just confused me there on

1 the transaction, on the forfeiture allegations. So you're
2 saying the forfeiture allegation includes the 48,000 that was
3 recovered?

4 MS. PELLEGRINI: It does, Your Honor. And it --
5 but as I'm looking at my notes now from that, I do recall
6 that on the second purchase, that was approximately \$25,000,
7 because the defendant indicated he would take the additional
8 half kilo but needed a few days to pay the money. So it --
9 that is my understanding, that it includes the money that we
10 did recover.

11 THE COURT: Okay. Well, I'm not going to spend
12 time on that right now because I don't think we need to
13 figure out the forfeiture or are not likely to have to figure
14 out forfeiture in this case --

15 MS. PELLEGRINI: I think --

16 THE COURT: -- but in the event that we get to
17 forfeiture, I will need a little bit more clarity on that
18 before going ahead with a forfeiture order.

19 But at this point, proceeding with the plea
20 colloquy, Mr. Cuevas Gonzalez, did you understand the facts
21 that Ms. Pellegrini stated that the United States would be
22 prepared to show if the case went to trial?

23 THE DEFENDANT: Yes.

24 THE COURT: And to summarize it briefly, what the
25 Government contends is that they have communications from

1 you, text or phone, between you and the confidential witness
2 when these sales were arranged; and that on the three
3 occasions, on each of the three occasions, that you were the
4 person who got out of the vehicle that drove up and went into
5 the confidential witness's vehicle for the drug transaction.

6 And I believe -- I'm not sure you said this right
7 now, Ms. Pellegrini, or not -- but I believe the transaction
8 inside the confidential witness's car was videotaped. Is
9 that correct?

10 MS. PELLEGRINI: Yes, they were, Your Honor. There
11 are pictures and video of that -- those transactions.

12 THE COURT: So if the case had gone to trial, the
13 evidence would include this video footage, et cetera; and
14 that in each of these transactions, there was -- that you
15 provided a substance that included -- that contained fentanyl
16 in it; and that when they weighed -- when that was analyzed,
17 it amounted to more than the -- 400 grams of substance
18 containing fentanyl on each of the three occasions. Each
19 time, it was more than 400 grams.

20 Do you have any dispute with those facts?

21 THE DEFENDANT: I need to talk to my lawyer.

22 THE COURT: Okay. We need to ask you to get the
23 correctional officer back in.

24 THE DEPUTY CLERK: You should see an invitation on
25 your screen to a breakout room.

1 (Pause in proceedings.)

2 MR. KRASNOO: We have returned. At least I have
3 returned.

4 THE INTERPRETER: Okay. We're good to go.

5 THE COURT: Sorry. That was on me. Okay. We're
6 good to go.

7 MR. KRASNOO: Okay.

8 THE COURT: Did you have to -- did you want to
9 report on something, Mr. Krasnoo?

10 MR. KRASNOO: Just that I have consulted with my
11 client. I have answered his question to his satisfaction,
12 and he wishes to resume.

13 THE COURT: Okay. So I think we were just about to
14 sum up here.

15 Mr. Cuevas Gonzalez, do you have any dispute with
16 the facts that I have recounted?

17 THE DEFENDANT: No. No, I'm agreeing with all the
18 facts.

19 THE COURT: Okay. And are you, in fact, guilty of
20 the facts that the -- are charged here?

21 THE DEFENDANT: Yes.

22 THE COURT: And to counsel, is there any reason the
23 Court should not take the change of plea?

24 MR. KRASNOO: Not to my knowledge, Your Honor.
25 Mr. Krasnoo on behalf of the defendant.

1 MS. PELLEGRINI: No, Your Honor.

2 THE COURT: Okay. So I will now take the change of
3 plea.

4 Ms. Marchione?

5 THE DEPUTY CLERK: Yes, Your Honor.

6 Mr. Cuevas Gonzalez, you are charged in an
7 indictment with: Count 1, conspiracy to distribute and to
8 possess with intent to distribute 400 grams or more of
9 fentanyl, all in violation of Title 21 United States Code
10 Section 846.

11 Count 2, distribution of and possession with intent
12 to distribute 400 grams or more of fentanyl, aiding and
13 abetting, all in violation of Title 21 United States Code
14 Sections 841(a) (1) and (b) (1) (A) (vi) and Title 18,
15 United States Code Section 2.

16 Count 3, distribution of and possession with intent
17 to distribute 400 grams or more of fentanyl, aiding and
18 abetting, all in violation of Title 21 United States Code
19 Sections 841(a) (1) and (b) (1) (A) (vi) and Title 18
20 United States Code Section 2.

21 And Count 4, distribution of and possession with
22 intent to distribute 400 grams or more of fentanyl, aiding
23 and abetting, all in violation of Title 21 United States Code
24 Sections 841(a) (1) and (b) (1) (A) (vi) and Title 18
25 United States Code Section 2.

1 You have previously pleaded not guilty to these
2 charges. Do you now wish to change your plea? Yes or no?

3 THE DEFENDANT: Yes.

4 THE DEPUTY CLERK: How do you now plead to
5 Counts 1, 2, 3, and 4? Guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE DEPUTY CLERK: Thank you.

8 THE COURT: The Court finds the defendant is fully
9 competent and capable of entering an informed plea, that he
10 is aware of the nature of the charges and the consequences of
11 the plea, and that the plea of guilty is a knowing and
12 voluntary plea supported by an independent basis in fact
13 containing each of the essential elements of the offenses
14 charged. The plea is, therefore, accepted, and the defendant
15 is now judged guilty of these offenses.

16 So with that, the next step here is the presentence
17 report. You will be interviewed by the probation office.
18 The -- your attorney may be present for that interview if you
19 wish. It is important that the report is accurate. It will
20 not only affect what sentence you receive, but also what
21 happens to you after you're sentenced. If you're sent to
22 prison, it will affect where you're sent, what happens when
23 you get there.

24 Even minor mistakes in the report should be
25 corrected. You'll have a chance to have -- read the report

1 or have it read to you and to file objections before the time
2 of sentencing. You and your attorney will both have the
3 opportunity to speak on your behalf at the time of
4 sentencing.

5 So with that, I am referring you to the probation
6 office for the presentence investigation and preparation of
7 the report. And we need a date for sentencing.

8 THE DEPUTY CLERK: Your Honor, I have April 2nd at
9 3:30.

10 THE COURT: April 2nd at 3:30.

11 Anything else? Anything else that we need to
12 address today?

13 Yes?

14 MR. KRASNOO: Your Honor, I should point out,
15 although it's not my holiday, it is Good Friday, April 2nd;
16 and I don't know whether the religious holiday impacts on
17 other people --

18 THE COURT: I appreciate you're noting that, but --
19 yeah, let's -- sometimes we try to take a little time off
20 around there. So what do we have after that?

21 THE DEPUTY CLERK: I'm looking at the calendar,
22 Judge.

23 We have April 8th at 3:30.

24 THE COURT: Let's do that. April 8th at 3:30.

25 Anything else right now?

1 MR. KRASNOO: Not from the defendant, Your Honor.

2 THE COURT: Ms. Pellegrini?

3 MS. PELLEGRINI: I've lost my audio, but no,
4 nothing else.

5 THE COURT: Okay. So with that, you are remanded
6 to the custody of the marshals, and I will see everyone in
7 April.

8 Thank you very much.

9 MR. KRASNOO: Thank you.

10 THE DEPUTY CLERK: Thank you. Court is in recess.

11 (Court in recess at 4:21 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Robert W. Paschal, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 24th day of January, 2021.

/s/ Robert W. Paschal

ROBERT W. PASCHAL, RMR, CRR
Official Court Reporter